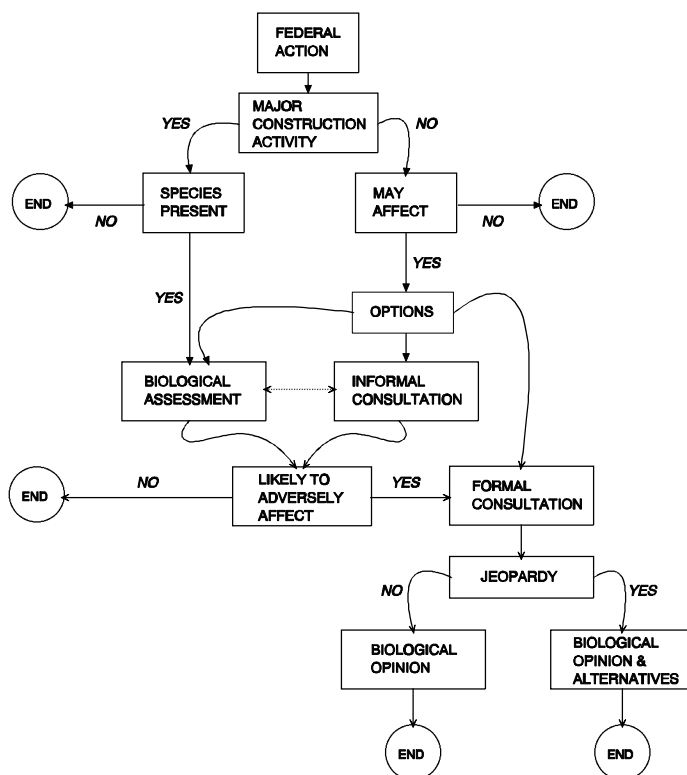


### IV. B. 1. Endangered and Threatened Species

- a) Background. The Congress of the United States of America passed the Endangered Species Act of 1973 to combine and strengthen its predecessors, such as the Endangered Species Preservation Act of 1966 which only afforded protection to animal species, to

*“....provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of....treaties and conventions....”*

Section 7 of the Act requires that Federal agencies consult with the U.S. Fish and Wildlife Service (FWS) when any activity permitted, funded, or conducted by that agency may affect an endangered or threatened species or a listed or designated critical habitat. This is commonly referred to as the “Section 7 Consultation Process” and it involves both informal and formal dialogues as well as a biological assessment and an expert agency opinion. The Section 7 Consultation Process is diagrammatically represented below.



Rural Development is currently operating under an informal protocol for communications with the U.S. Fish and Wildlife Service and the Colorado Division of Wildlife (DOW) (both of which have been determined eligible to serve as expert agencies in identifying the presence of federally listed endangered and threatened species and their habitats, though informal and formal Section 7



consultations must be made with the FWS) and written inquiries should be made directly to both agencies (as discussed in greater detail under item g) below) to obtain their unique perspectives regarding wildlife issues. Rural Development environmental reviewers should accomplish this special process early in the environmental review process because if any resources of concern are identified, back-and-forth consultations (with 30-day comment periods) will likely result.

b) Governing Legislation, Regulations, and Other Directives.

(1) Federal

- (a) Endangered Species Act as amended by Public Law 97-304 (The Endangered Species Act Amendments of 1982) as reauthorized
- (b) Title 7, Part 1b and 1c, Code of Federal Regulations, USDA's National Environmental Policy Act
- (c) U.S. Department of Agriculture, Departmental Regulation 9500-4, Fish and Wildlife Policy (1983).
- (d) Executive Order 11514, Protection and Enhancement of Environmental Quality.
- (e) National Environmental Policy Act, 42 U.S.C. 432.
- (f) Bald and Golden Eagles Protection Act of 1979.
- (g) International Migratory Bird Treaty

(2) State.

- (a) Colorado Revised Statutes as set forth in Title 35, as amended.
- (b) Fish and Wildlife Coordination Act, Section 404 of Colorado Public Law 92-500.

c) Policy.

- (1) Federal. Rural Development should not authorize, fund, or carry out any proposal or project that is likely to (1) jeopardize the continued existence of any plant or wildlife species listed by the Secretary of Interior or Commerce as endangered, threatened or proposed for listing (if a species that is proposed for listing is not considered during the planning process, the project sponsor may find that their project will be delayed, stopped, or in need of substantial modification if the Endangered Species Act listing process is completed during the time that the project is under construction); or (2) destroy or adversely modify the habitats of listed species when such habitats have been determined critical to the species's existence by the Secretary of Interior or Commerce unless Rural Development has been granted an exemption for such proposal by the

Endangered Species Committee pursuant to subsection (h) of Section 7 of the Endangered Species Act.

If it is determined that any Rural Development action (authorized, funded, or carried out by Rural Development) may affect a federally listed endangered or threatened species, Rural Development should request formal consultation from the FWS pursuant to Section 7 of the Endangered Species Act. Such consultation should consider avoidance and mitigation alternatives.



*Adult piping plover (Charadrius melodus)*

[Threatened, Colorado Federally]

- (2) State. Rural Development should not authorize, fund, or carry out any proposal that is likely to jeopardize the protection, preservation, enhancement, or management for beneficial use of plant or animal species, plant associations, or their habitats determined critical, whether endangered or threatened, by the Colorado Wildlife Commission, the DOW, or the Colorado Natural Areas Program, unless Rural Development has been granted an exemption for such proposal after completing Section 7 consultation with, the DOW and the FWS. Such consultation should consider avoidance and mitigation alternatives.

Rural Development activities should also take into account the protection and enhancement of State listed game species and their habitat as recommended by the DOW.



[Also consider impacts to game...]

d) Classification.

- (I) Federal.
  - (a) Endangered,
  - (b) Threatened.
- (2) State,
  - (a) Endangered.
  - (b) Threatened.
  - (c) Protected.

Various species are nominated for listing under the authorities of the Endangered Species Act for a variety of reasons. Biological scarcity with the Continental United States or multi-national scarcity covered under the authorities of the International Migratory Bird Treaty are a couple examples.



e) Agency jurisdiction.

(1) Federal.

Confer with the Project Leader, U.S. Department of the Interior, Fish and Wildlife Service. The contact office for actions which could impact endangered and threatened species in Colorado is:

U.S. Department of the Interior  
Fish and Wildlife Service  
Ecological Services  
Lee Carlson, Project Leader  
P.O. Box 25486, DSC  
Denver, Colorado 80225

(303) 275-2370

<http://www.fws.gov>

(2) State.

Regarding Federal and State protected animal species only and their critical habitats, confer with the State of Colorado, Department of Natural Resources, Division of Wildlife. The contact office for actions which could impact endangered and threatened species in Colorado is:

State of Colorado  
Department of Natural Resources  
Division of Wildlife  
6060 North Broadway  
Denver, Colorado 80216

(303) 291-7202.

<http://wildlife.state.co.us/>

f) Listings and Locations of Resource. To determine whether or not a proposed action will impact an Endangered, Threatened, or otherwise protected species, association, or critical habitat, consult directly with the FWS and the DOW. Concentrated data is maintained within the FWS and DOW computer databases. These agencies have actually developed map, computer, and manual filing systems as well as web-sites. The listings of species and critical habitat maintained by both agencies change periodically as ecological and political dynamics dictate so it is best to not attempt to secure this vital information from dated publications.

Following are web-sites for the USFWS and the DOW which contain all updated information regarding Endangered, Threatened, or otherwise protected species:



U.S. Fish and Wildlife Service  
*"Federally Listed Animals and Plants in Colorado"*  
(Mainly an alphabetical listing):

<http://www.r6.fws.gov/co4.html>

Colorado Division of Wildlife  
*"Colorado Listing of Endangered, Threatened & Wildlife Species of Special Concern"*  
(A listing and an educational species handbook, *"Wildlife in Danger"*):

<http://www.dnr.state.co.us/wildlife/T&E/list.asp>

Colorado Natural Heritage Program  
*"Rare Plant Field Guide"*  
(A listing and detailed guide to plant species of concern):

<http://ndis.nrel.colostate.edu/ndis/rareplants/masterlist.html>

- g) Interagency Screening Protocol. The following interagency screening protocol is recommended as a first step in analyzing prospective impacts to important wildlife resources and would accomplish the initial portion of the Section 7 Consultation Process. Rural Development environmental reviewers should accomplish this special process in the early stages of the National Environmental Policy Act (NEPA) environmental review process and conclude it prior to the conclusion of the NEPA environmental assessment:

- STEP 1: The Rural Development environmental reviewer should determine if the proposed Rural Development activity is exempt from review for impacts to endangered and threatened species and their critical habitats. The following activities have been mutually agreed (by the FWS and the DOW) to be exempt from review:
1. The renovation of existing structures (excluding water control structures, dikes, drainage channels, or structures).
  2. Disturbance of urban developed land, unless unaltered or in a floodplain or wetland.
  3. Feedlots, barnyards, or stock holding facilities, unless located in a floodplain or wetland.
  4. Plowed fields, unless located in a floodplain or wetland.
  5. Location within Federal Interstate System right-of-way, unless a wetland or floodplain would be affected.



STEP 2: The Rural Development environmental reviewer should then complete Sections A and C of the following transmittal/information request letter and forward it to the DOW and the FWS.



RURAL  
DEVELOPMENT

Dedicated to strengthening and serving Rural  
America

655 Parfet Street, Room E-100  
Lakewood, Colorado  
80215  
(303) 236-2801, Ext. 115 (Office)  
(303) 236-2847 (FAX)

(Date)

**To:** State of Colorado  
Department of Natural Resources  
Division of Wildlife  
6060 North Broadway  
Denver, Colorado 80216

U.S. Department of the Interior  
Fish and Wildlife Service  
Ecological Services  
Lee Carlson, Project Leader  
P.O. Box 25486, DSC  
Denver, Colorado 80225

**Re:** U.S. Department of Agriculture, Rural Development Informal Consultation Inquiry

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**-----SECTION A: (To be completed by U.S.D.A., Rural Development)**  
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Applicant's/Borrower's

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Applicant's/Borrower's Address: \_\_\_\_\_

U.S.D.A., Rural Development Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project  
Description: \_\_\_\_\_

Project/Property Legal Description (including water rights, if  
applicable): \_\_\_\_\_



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(Attach best available maps, such as U.S. Geological Survey quad maps, and graphically depict the assumed overall project environmental impact area.)

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**-----SECTION B: (To be completed by the U.S. Fish and Wildlife Service or the Colorado Division of Wildlife, as addressed)**

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		<b>Important Resource</b>	<b>Agency Responsible</b>	<b>Reviewer's Name</b>	<b>Date of Review</b>	<b>Property Contains Important Resource (Yes/No)</b>
1.		Wetlands.				
2.		Riparian zones and floodplains.				
3.a.		Federally listed and proposed threatened and endangered species,  Critical habitats,  Potential habitats for release, restoration, and/or reintroduction.				
3.b.		State listed and proposed threatened and endangered species,  Critical habitats,  Potential habitats for release, restoration, and/or reintroduction.				



- 
4. Fish and wildlife  
habitats of local,  
regional, state, or  
national importance,
- As identified by  
Congressional Mandate,  
International Treaty, or  
Management Plans,
- Of potential benefit to  
species of Federal  
trustee responsibility  
(i.e. migratory birds),
- As identified by state  
or private non-profit  
groups.

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Comments/recommended actions/follow-up: \_\_\_\_\_

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-----**SECTION C: (To be completed by U.S.D.A., Rural Development)**

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\_\_\_\_\_  
Requestor's Name

\_\_\_\_\_  
Requestor's Signature

\_\_\_\_\_  
Requestor's Title

\_\_\_\_\_  
Date



- STEP 3: The FWS and the DOW would investigate the likely occurrence of and ramifications upon any regulated biological resources which might be affected by the pending Rural Development action. If Rural Development does not receive a verbal or written response from either expert agency within 30 days of the date of receipt of the inquiry letter by the FWS or the DOW, the Rural Development environmental reviewer may assume this means a negative response and conclude this portion of the environmental analysis. It is recommended, as a courtesy however, that the Rural Development environmental reviewer also accomplish a telephone contact with the FWS and/or the DOW if a response has not been received within the 30-day comment period to verify the status of their review/response.
- If, on the other hand, either expert agency were to indicate the pending Rural Development action might impact a regulated biological resource, they would complete Section B of the inquiry letter (or provide a separate response letter) and thereby notify Rural Development of probable impacts, potential mitigation measures, possible alternatives, and necessary follow-up. Either expert agency would attempt to either verbally or otherwise notify Rural Development of such a positive response within 30 days of issuance of the inquiry. These agencies are overtasked and this is one more reason to accomplish a telephone contact with the FWS and/or the DOW if a response has not been received within the 30-day comment period to verify the status of their review/response.
- STEP 4: Should Rural Development receive a positive response, the Rural Development environmental reviewer would then contact the appropriate expert agency representative for general follow-up direction (i.e. would a joint site inspection be warranted?). Additionally, the State Environmental Coordinator should also be contacted at this point and be briefed since the formal Section 7 consultation processes might need to be initiated and a biological survey may need to be contracted for by the applicant to reach closure.
- STEP 5: Whether a positive or a negative response is received, all the particulars in regard to interagency coordination and the outcome of the Section 7 process should be fully summarized and documented in the environmental assessment for a Class 1 or 2 action, as pertinent. Alternatives and required mitigation measures, if any, should also be fully explained in the environmental assessment.



h) Other References.

- 1) *"Endangered Species from Around the World"*

(Web-site discusses endangered species from an international perspective.)

<http://ecomindfulness.org/endangered/>

- 2) U.S. Fish and Wildlife Service

*"The Endangered Species Act of 1973"*

(Web-site provides the full text of the Endangered Species Act)

<http://endangered.fws.gov/esa.html>